IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14532 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATIN

Versus

S H CHAUHAN

Appearance:

1. Special Civil Application No. 14532 of 1993

MR HARDIK C RAWAL for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner and Mr. Brahmbhatt for the respondent workman. In this petition under Article 227 of the

Constitution of India, the petitioner has challenged the award made by the Industrial Tribunal, Baroda in Reference (IT) NO. 212 of 1988 dated 18th May, 1993 wherein the tribunal has set aside the order of punishment dated 8th August, 1997 whereby the workman was placed in the minimum time scale of the post of conductor and the petitioner was directed to pay the difference of salary to the respondent workman within period of three months.

This petition was admitted by this court by issuing rule thereon on 13.6.1994 and while admitting this petition, ad.interim relief in terms of para 6(B) of the petition has also been granted by this COurt. Affidavit in reply has been filed by the respondent workman.

During the course of hearing, learned advocate Mr. Raval appearing for the petitioner has submitted that the respondent has temporarily misappropriated the funds of the corporation and has not deposited the amount in question immediately with the corporation. Some of the tickets were taken away by the conductor from the block which was allotted to the respondent and that the amount of those tickets were not deposited by the respondent workman and, therefore, considering it as an act of misappropriation, the respondent was initially dismissed from the service. Said punishment of dismissal from service was subsequently modified in an appeal preferred by the workman and he was placed in the minimum time scale in the category of conductor and, therefore, the punishment which was modified by the appellate authority was proper and, therefore, the tribunal ought not to have interfered with the order of punishment modified by the appellate authority. He submitted that the respondent is also having the past record. Once, the respondent was dismissed from service and was subsequently reinstated in service pursuant to the labour court's award. Once, he was placed in the minimum time scale and, therefore, net result of the said punishment would come to stoppage of about four to five annual increments of the respondent workman and, therefore, according to his submission, the tribunal has committed gross error in interfering with the punishment order as modified by the appellate authority and, therefore, this COurt should interfere with the award made by the tribunal.

As against that, learned advocate Mr. Brahmbhatt for the respondent workman has submitted that the respondent has not committed any misconduct as alleged

and the respondent was absent for ten days and meanwhile, tray of the respondent was lying in the depot in the box and somebody has taken away the tickets during the said period from the block and the respondent workman was completely unaware of these things and, therefore, as and when the demand was made by the corporation, it had come to his notice and immediately thereafter, the amount in respect of the tickets in question was deposited by the respondent workman before the petitioner corporation. ON the basis of these submissions, he has submitted that as such there was no any question of dishonesty and/or misappropriation of the funds of the corporation as alleged. He has submitted that the factum of his remaining absent for a period of about ten days has not been disputed by the petitioner before the tribunal and there was no evidence led to that effect by the petitioner before the tribunal and, therefore, the tribunal was right in observing that if the respondent has taken away the ticket, he will not be able to get any unjust enrichment of such misconduct because ultimately he will have to deposit the amount of the entire block as if it were sold to the passenger and, therefore, as such, there was no benefit to the respondent if he took away the tickets from in-between of block. According to him, the tribunal has, after considering all these aspects of the matter, passed the award in question and, therefore, this Court should not interfere with such award of the tribunal and no error has been committed by the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the tribunal. The charge against the respondent was to the effect that on 3rd September, 1987, at about 8.00 p.m., when the respondent completed his duty from Chhota Udepur Depot, he went to the traffic controller Mr. Joshi where his tray was examined and it was found that some tickets in one block in between were missing and, therefore, report was submitted against the respondent and on that basis, he was then served with a charge sheet and then, his statement was recorded by the concerned officer which was produced before the tribunal at page 63 to 70. The respondent has answered before the authority that if any block has been entrusted to him, then, he is liable to pay the amount of that block to the corporation. If the block or any tickets therefrom are missing,then, it is the duty of the conductor concerned to pay the amount of such tickets to the corporation as if the same were purchased by the passengers. This aspect of the matter has been considered by the tribunal and the tribunal has concluded that there was no gain received by the

respondent workman and if some of the tickets were missing, then, for such tickets, the respondent is liable and answerable for payment to the corporation. The tribunal has also examined the aspect that the respondent was absent from duty from 22.8.1983 to 2.9.1983. This aspect has not been disputed by the corporation and on 3.9.1983 when he joined the duty, this defect has been pointed out by the T.C. Mr. Joshi and, therefore, in view of these facts, the tribunal has observed that while the respondent was absent from duty for the period as aforesaid, somebody else has played mischief by taking away some tickets from the block and, as such there was no intention to commit any act of dishonesty. This aspect has been taken into account by the tribunal and the tribunal has not granted any back wages to the respondent for the intervening period from the date of dismissal till the date of punishment dated 8th August, 1987 imposed by the appellate authority but has only set aside the punishment of putting him in the minimum time scale and, therefore, according to my opinion, the Tribunal has given cogent reasons in support of its conclusions and the tribunal has applied its mind in respect of the facts of the present case and after considering the entire record, the tribunal has recorded the finding that there was no any intention to commit any act of dishonesty or to misappropriate the funds of the corporation. Thus, the tribunal has not committed any error either in law or in facts. Mr. Raval, the learned advocate for the petitioner has not been able to point out any jurisdictional error committed by the tribunal. He has also not been able to point out that any material irregularity has been committed by the tribunal which has caused any injustice to the petitioner corporation which would require interference of this court. Therefore, there is no substance in this petition.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Ad.interim relief granted earlier shall stand vacated. There shall also be no order as to costs.

7.3.2002. (H.K. Rathod,J.)

Vyas